BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force	)	RM-8181

OPPOSITION TO PETITION FOR STAY

The Inmate Calling Services Providers Task Force ("Task Force") hereby opposes the March 21, 1996 "Petition for Partial Reconsideration or Stay" of Bell Atlantic, BellSouth, NYNEX and Pacific/Nevada Bell (the "Bell Companies' Petition").[1] To the extent that the Bell Companies' petition requests a stay of the Commission's February 20, 1996 Declaratory Ruling in this proceeding, that request is both procedurally and legally deficient on its face and may not be considered by the Commission.

First, except as stated in the caption, nowhere in the petition do the Bell Companies' even request a stay. Rather, the only relief requested is for the Commission

[1] Section 1.44(d) of the Commission's rules, 47 C.F.R. § 1.44(d), requires that oppositions to a request for stay shall be filed within 7 days after the request is filed. Although the certificate of service accompanying the Bell Companies' petition states that the petition was served by mail to the undersigned counsel on March 21, 1996, the petition was sent to the undersigned counsel's previous law firm. As such, the undersigned counsel did not receive a copy of the petition until several days after March 21, 1996. To the extent that it is necessary, we hereby request leave to file this opposition outside of the time required by the Commission's rules.

to reconsider the implementation schedule set forth in the Declaratory Ruling.[2] The so-called stay request is, in fact, a request for relief on the merits. Thus, the Bell Companies have submitted a request for a delay in the time period required for implementing the order, not a request for preservation of the status quo pending disposition of their request for a time delay. A stay, therefore, cannot be granted.

Second, section 1.44(e) of the Commission's rules states that "any request for stay of the effectiveness of any decision or order of the Commission shall be filed as a separate pleading. Any such request which is not filed as a separate pleading will not be considered by the Commission." 47 C.F.R. § 1.44(e)(emphasis added). The Bell Companies purported request for a stay was not set forth in a separate pleading and must therefore be dismissed without further consideration.

Third, even if the petition did properly request a stay, nowhere in the petition do the Bell Companies recognize or discuss the applicable standard for a stay, namely the four-prong test of Washington Metropolitan Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977). That test requires a stay petitioner to demonstrate that (1) absent a stay, it will be irreparably injured; (2) it is likely to succeed on the merits; (3) a stay would not cause harm to other parties; and (4) a stay is consistent with the public interest. The Bell Companies did not even attempt to address any of these four requirements. Thus, the request for stay is legally deficient on its face and must therefore be dismissed.

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[2] It is our understanding that the Petition for Reconsideration will be placed on public notice and that a pleading cycle will be established. The Task Force will respond to the reconsideration portion of the Bell Companies' petition once a pleading cycle has been set.

Apart from these *prima facie* procedural deficiencies, there is nothing in the Bell Companies' petition that could even begin to satisfy the strict requirements for a stay. The sole contention for the Bell Companies' petition is that the Commission should delay implementation of the Declaratory Ruling until the Commission adopts rules on payphone unbundling as required by Section 276 of the Telecommunications Act of 1996. However, the Bell Companies have missed the point of the Commission's ruling. They continually misstate the Commission's ruling as affecting inmate-only payphones. The ruling is much broader. The ruling makes clear that inmate-only calling systems are not within the Tonka exemption for payphones. Inmate calling systems are private systems that frequently include such things as computers and related processing equipment – equipment that is and always has been customer-promises equipment ("CPE").

The accounting and related mechanisms for CPE such as this have been in existence for almost 10 years. Surely, the Bell Companies should have little difficulty in figuring out how to comply with the ruling as to the parts of their inmate calling systems that are the same as equipment that has always been subject to the CPE rules. Adding the payphone-shaped terminals into the existing cost accounting rules for CPE should be a relatively easy task. Indeed, the Bell Companies' claim that "new Part 64 cost pools would need to be developed" is disingenuous. Those portions of inmate-only calling systems that have been treated as CPE in other contexts of the CPE rules can fit into existing cost pools; there is no reason why new cost pools should be necessary. The portions of inmate calling equipment that consists of the payphone terminal should not be difficult to include.

Even if new cost pools are necessary, the Bell Companies have recognized that they will soon be required to separate inmate-only systems from the regulated accounts pursuant to the requirements of Section 276. Further, if the Bell Companies are correct in stating that they will need to conduct a "manual review" of their records, then a "manual review" of these records is also something that they are going to have to do anyway to comply with Section 276. Thus, there is no way that the ruling causes harm to the Bell Companies, let alone the irreparable harm necessary for a stay. To the contrary, if the Bell Companies' contention is correct, the ruling will assist Bell Companies in their efforts to comply with the requirements of the Act.

Indeed, the non-structural safeguards that the Commission must establish pursuant to its implementation of Section 276 must – at a minimum – satisfy the existing Computer III requirements. While the Commission may ultimately expand upon those safeguards, it is clear that, at a minimum, the Bell Companies will have to comply with the existing rules. Thus, it is inconceivable that complying with the Declaratory Ruling can "irreparably harm" the Bell Companies. It is even more inconceivable how they are likely to succeed on the merits of avoiding implementation of the existing standards absent a repeal of Section 276 by Congress. In short, there are simply no grounds for a stay.

The Bell Companies additional claim that they will be unable to comply with the ruling within the time allotted because of the time constraints involved in unbundling an unspecified network service is misleading. First, there is nothing in the record that indicates that the Bell Companies utilize central office functions in their inmate calling systems. To the contrary, the premise of the Commission's ruling is that

the Bell Companies are utilizing CPE, not the central office, to provide the functionality at the terminals.

If, as the Bell Companies contend, there are network services that will need to be unbundled and which are subject to a twelve month disclosure requirement, the appropriate remedy is a waiver, not a stay. In such a case, the Bell Companies also will need a waiver to comply with the Commission's disclosure rules once the Section 276 rules are adopted. If a waiver is needed anyway, the Bell Companies should seek the waiver; they may not seek a stay until they have first filed the waiver request.[3] Indeed, if the Bell Companies will need a waiver of the disclosure rules once the Section 276 rules are adopted, they should begin the unbundling process now so that it is substantially complete by the time the new rules are established. Otherwise, the Bell Companies will surely again cite the alleged twelve month disclosure requirement as a basis for delay in implementation of the new rules once they are established.

In any event, the information in the Bell Companies' filing will support neither a stay nor a waiver. The Bell Companies provide no details on what type of functionality is used. Absent more information, there is no way that a stay could be granted. A stay and/or a waiver requires sufficient facts to allow the Commission and other parties to address the merits.

Finally, there is no basis for the Bell Companies claim that a stay is in the public interest. To the contrary, for the Bell Companies to succeed on this claim, the

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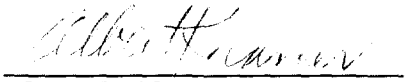
[3] By pointing to the appropriate procedural course, the Task Force is by no means conceding that a waiver or a stay could or should be granted. See text following this note.

Commission would be forced to rule that compliance with the CPE rules in general is contrary to the public interest since most of the equipment included in the Bell Companies' inmate calling systems is, and always has been, CPE.

WHEREFORE, the Task Force respectfully requests that the Commission dismiss or deny the Bell Companies' request for stay.

April 4, 1996

Respectfully submitted,



Albert H. Kramer
David B. Jeppsen
DICKSTEIN, SHAPIRO & MORIN, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 785-9700

Attorneys for Inmate Calling Services Providers Task Force

Certificate of Service

I hereby certify that on April 4, 1996, a copy of the foregoing Opposition to Petition for Stay was delivered by first-class mail to the following parties:

John M. Goodman
Bell Atlantic Telephone Companies
1133 20th Street, NW
Washington, D.C. 20036

M. Robert Sutherland
Theodore R. Kingsley
BellSouth Corporation and
BellSouth Telecommunications, Inc.
1155 Peachtree Street, NE
Suite 1700
Atlanta, Georgia 30309

Lucille M. Mates
Sarah Rubenstein
Polly Brophy
Pacific Bell and Nevada Bell
140 New Montgomery Street
Room 1522A
San Francisco, CA 94105

William J. Balcerski
NYNEX Telephone Companies
1111 Westchester Avenue
White Plains, NY 10604

Robert M. Lynch
Durward D. Dupre
J. Paul Walters, Jr.
Southwestern Bell Telephone Company
One Bell Center
Room 3520
St. Louis, Missouri 63101

Mary J. Sisak
MCI Telecommunications
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Nancy C. Washington